

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
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SPECIAL CIVIL APPLICATION No 1089 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

CJ PARIKH PRATHMIK SHALA

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

MR KM SHETH for Petitioner
SERVED BY DS for Respondent No. 1
MR JD AJMERA for Respondent No. 2
Ms.V.K. Parekh, learned A.G.P. for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/08/97

ORAL JUDGEMENT

The petitioners in this case has got notice and Rule issued from this court as also the ad interim order in its favour by making a false averment in the petition to the effect that no Notification dated 19.2.82 had been issued. Yesterday when the matter was taken up Mr. Sheth was insistent and persistent in his stand that no such

Notification had been issued and he argued at length with reference to the averments made in para 7 at page 10 of the Special Civil Application. The details in this regard have been mentioned in the order, which was passed yesterday on 31.7.97, which is reproduced as under:

"Mr. Sheth appearing for the petitioners has failed to show that no notification under section 1(3)(b) under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 has been issued by the Central Government. While Mr. Ajmera submitted that such a notification has been issued way back in 1982. To say that such a notification has not been served upon the petitioner is a simple exercise in futility because such notifications are published in gazettes and are not required to be served on individual establishment. The respondents have sought recovery of the amount of the provident fund after an inquiry under section 7A of the aforesaid Act. The learned counsel for the petitioner has now referred to the averment made at page 10 of the petition and submitted that the reference to provision of section 1(b) is actually meant for section 1(3)(b). It has been clearly stated that "However, till today no such notice has been given by the Central Government or there is any notification in the official gazette that the petitioner - Trust is notified as establishment under sec. 1(b) of the said Act".

Mr. J. D. Ajmera submitted that if in making the above averment the petitioner means 1(3)(b), it is clearly a false averment because the notification to that effect under section 1(3)(b) has already been issued way back in 1982 and there is no section in the Employees Provident Fund and Miscellaneous Provisions Act, 1952 like 1(b) and he has submitted that what to talk of the interim order the petition itself deserves to be dismissed on this count alone. Mr. Ajmera wants time to produce the notification which was published in the gazette. Put-up tomorrow."

Mr. Ajmera has produced the copy of the Notification dated 19.2.82. It is, therefore, clear that the petitioners in this case are guilty of making false averments. They are, therefore, not entitled to any audience by this court in the equitable jurisdiction under Articles 226 and 227 of the Constitution of India. This Special Civil Application, therefore, deserves to be rejected on this ground alone and the same is rejected accordingly. Rule is hereby discharged. Ad interim order dated 4.2.97 stands automatically vacated. No order as to costs.

